Supreme Court, U.S.
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(3)

NO. 91-92

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

CAERNARVON TOWNSHIP, et al.
Petitioners

v.

MORGANTOWN PROPERTIES
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

PETITIONERS' REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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Township

QUESTIONS PRESENTED

1. Did the Petitioners preserve the equal protection issues before this Court with sufficient precision before the trial court?

2. Do the Petitioners have standing to challenge the alleged unconstitutionality of a statute:

   a. Fencing them out of the vote on a ballot question seeking to carve a new municipality with full governmental powers out of their existing municipalities?

   b. Granting to landowners only the opportunity to place on the ballot a proposition to create a new municipality with full governmental powers within boundaries prescribed by them?

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REPLY TO BRIEF IN OPPOSITION

I. PETITIONERS DID PRESERVE THE EQUAL PROTECTION ISSUES BEFORE THIS COURT WITH SUFFICIENT PRECISION BEFORE THE TRIAL COURT.

On March 28, 1988, Petitioners filed a detailed motion with the trial court raising the issues presented herein and served it appropriately. The Attorney General of Pennsylvania decided not to participate. Appendix 9a, 1a - 7a. (App. hereafter). Paragraph 13 of the motion invokes the Equal Protection and Due Process clauses of the United States Constitution's Fourteenth Amendment and federal election laws are cited in paragraphs 14 - 16. Pointing to the creation of different classes of citizens and voter disenfranchisement, Petitioners attack as unconstitutional the freeholder requirement for petitioning to create a new municipality and the restriction of the vote on the proposition to those residing within the proposed municipality. Paragraphs 17 and 19 of the motion. App. 4a - 5a.

Respondent's reliance on *Bankers Life and Casualty Co. v. Crenshaw*, 486 U.S. 71 (1988), is misplaced. There, Appellant's general allegation in the lower court that a punitive damage award was constitutionally excessive was found inadequate to preserve the issue. The specificity of Petitioners' motion is self-evident. And, the two Pennsylvania appellate courts which reviewed this case were presented with the motion's specific constitutional claims and addressed them. See Appendix to Petition for Certiorari, 16a and 28a - 31a.

II. PETITIONERS HAVE STANDING TO CHALLENGE THE ALLEGED UNCONSTITUTIONALITY OF THE STATUTE IN QUESTION.

A. Petitioners have standing to raise the challenged statute's provision fencing them out of the vote on a ballot question seeking to carve a new municipality out of their municipalities.

"Petitioners, who are nonresidents of the proposed borough, do have standing to raise this claim. . . . " Respondent's Brief in Opposition at 20. Also, see discussion of standing below.

B. Petitioners have standing to raise the challenged statute's provision granting to freeholders (landowners) only the opportunity to place on the ballot a proposition to create a municipality with full governmental powers within boundaries drawn by them.

Petitioner Kathleen Hood, a resident of Robeson Township (one of the municipalities out of which Respondent/Freeholder petitioned to carve the borough of New Morgan) was never a freeholder and lived with her parents. See her Affidavit and Suggestion of Record and her testimony. App. 10a - 13a.

The challenged restrictions of political rights deny access to the ballot : nonlandowners cannot petition to create a municipality and voters of the existing municipalities from which the new municipality is to be carved cannot vote on its creation unless they reside in it.

Petitioners meet both the constitutional test for standing under Article III of the United States Constitution (injury,

causation and redressability) and this Court's prudential test[1].

> "[A] person who does not own real property has Article III standing to challenge under the Equal Protection Clause a state-law requirement that one own real property in order to serve on a particular government board. " *Quinn v. Millsap*, 491 U.S. 95, 103 (1989).

Petitioners' facial challenge to the statute's denial of political rights (as in *Quinn*) from the inception of this controversy, gives them standing. *Id.*, text and note 8, citing *Turner v. Fouche*, 396 U.S. 346 (1970).

Nevertheless, Petitioner Hood and other nonlandowners are injured by a statute which is underinclusive of them and overinclusive of freeholder interests which are the only ones permitted to petition for a ballot question to create a municipality. The denial of petition rights to one group while granting them to another is denial of an equal opportunity for self-determination. The freeholders' exclusive petition rights subject citizens to the wishes of corporate property interests which can draw the exact boundaries of a new municipality with full governmental powers and thus control the outcome of a vote on the issue by fencing out unfriendly voters[2]. In fact,

---

[1] *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 472 (1982).

[2] The challenged statute's scheme provides for no alteration of the boundaries proposed by the freeholder and automatically endows the new municipality with full local governmental powers under the Borough Code upon an affirmative majority vote of the voters within the proposed borough. The review process (*Cont.*)

Respondent is the sole landowner of the proposed municipality; of the seventeen residents therein, eleven were registered voters who were either tenants or employees of Respondent. Petition for Certiorari at 3-5. See *Orr v. Orr*, 440 U.S. 268 (1979), where standing was granted to a man challenging the inequality of a statute allowing alimony to women only although he claimed no alimony.

Nonlandowners are also injured by their inability to file a preemptive or competing petition to incorporate which would include that part of the freeholder's land over which nonlandowners would desire to continue to exercise zoning and other legitimate municipal controls through their elective representatives or through direct participation in administrative and judicial proceedings. The negative economic and environmental consequences of zoning may serve as predicates for standing. *United States v. SCRAP*, 412 U.S. 669 (1973); *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59 (1978); *Valley Forge Christian College*, 454 U.S. at 486.

(*2 Cont.*) from petition to vote concerns itself only with the desirability of the proposal based on police powers, land development and financial impacts. As a ballot question the petition is worded exactly as originally proposed. See Respondent's Brief in Opposition at 1-2. In an attempt to distinguish this case from *Quinn v. Millsap, supra*, Respondent embellishes the review process by dwelling on its length, the number of exhibits, the "overwhelming" vote for the petition [a 9 to 1 vote] and even incorrectly asserts that "nonlandowning residents did appear before the Court and were heard on the issue...." Respondent's Brief at 15, 16. There was no evidentiary hearing before the Court. No citizens were heard.

The denial of petition rights is ultimately a denial of the right to vote on a question one would like to frame but may not[3].

The individual petitioners herein filed a zoning appeal from the issuance of a permit to Respondent for a trash incinerator and succeeded in having it revoked. Respondent circumvented that loss by using petition rights reserved to landowners to form its own municipality. Petition for Certiorari at 3.

Landowner/petitioners herein are also injured by Respondent's circumvention of an adverse zoning decision and by their inability to vote on a petition which nonlandowners might present. A non - discriminatory petition process increases the potential for making political choices from among differing points of view. The loss of interracial associational rights qualifies as an injury supportive of standing. *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205, 209-10 (1972). The loss of fundamental political rights such as the rights of political association and petition and the dilution of the franchise constitutes injury. United States Constitution, Amendments I and XIV. The controversy is concrete and the injury palpable. See

---

[3] "[All] voting-related rights are rights to participate in... [the election] process, and the import of the process for our system of government freights them with their indisputable moment." Footnote omitted. See L. Tribe, *American Constitutional Law*, Sec. 13-1 at 1062 et seq. (2d ed. 1988). The fundamental essence of voting-related rights is not satisfied when the right to participate in the political process is truncated or weakened in any way including class or economic distinctions or by limiting a voter to casting a ballot on a question which may only be presented by another class of citizens or by economic interests. See discussion in Petition for Certiorari, Section B at 11-13.

Duke Power Co., supra.

Petitioners also have standing to raise the rights of nonlandowners who may not be able to assert them. See *Barrows v. Jackson*, 346 U.S. 249, 257 (1953). That no one was shown to have been barred from filing a petition because of the freeholder requirement is of no moment. The identical argument was rejected in *Turner, supra*, at 361. See *Orr, supra*. The 17 nonlandowners and sole residents of the proposed borough (11 of whom are voters) are Respondent's financial captives and beneficiaries as tenants and employees. See page 4, *supra*. Those not wishing to live in a company town, as demonstrated by one citizen who (protected by the secrecy of the ballot) voted against the borough incorporation, would be constrained from challenging the statute in question. Respondent's Brief at 7. No challenge could be expected from those who favor the company town because it benefits them. When an unconstitutional provision is used to benefit a person whose rights are denied, a third party injured thereby may assert said rights. See *Buchanan v. Warley*, 245 U.S. 60 (1917), where a caucasian seller of real estate could challenge the unconstitutionality of an ordinance limiting black residency when a black buyer cited the ordinance in seeking to avoid specific performance.

Petitioners suffer disenfranchisement when they are fenced out of the vote on the proposed municipality to be carved out of their municipalities. Thus their right to self-determination as part of an existing government and community is undermined.

Causation is found in Respondent's use of the challenged

provisions to deprive the individual petitioners of their zoning victory and to deprive them of all zoning and other governmental controls over Respondent's land and the financial, environmental and societal benefits derived therefrom.

A decision favorable to Petitioners will redress the loss of their zoning victory and return the parties to the governmental status quo ante. Also, Petitioners will regain equal protection of the laws by not being subjected to a means test when dealing with the fate of their community.

The prudential principles of standing are satisfied. As demonstrated above, the instant Petition sets forth specific grievances suffered by Petitioners within a zone of constitutional interests applicable to them.

Respondent's Brief (at 19, 22) views the injuries done to Petitioners as benefits safeguarding the freeholder's right to form its own government by preventing nonlandowners from filing their own petition because that would give them "disproportionate power", and by fencing out from the vote those outside the enclave because they "would nearly always oppose the incorporation" of the new municipality. "'Fencing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible." *Carrington v. Rash*, 380 U.S. 89, 94 (1965), followed in *Cipriano v. City of Houma*, 395 U.S. 701, 704[4].

---

[4] Unless it is demonstrated that "all those excluded are in fact substantially less interested or affected than those the statute includes" and that the "exclusions are necessary to promote a compelling state interest" the exclusionary provisions (*Cont.*)

CONCLUSION

Respondent's claim (page 18 of its brief) that freeholder political rights statutes must be valid because they exist ignores the rational basis test of *Quinn v. Millsap*, 491 U.S. 95 (1989), and a long line of precedents knocking down barriers to those rights such as race, sex, property and residency. However, these barriers survive in 30 states warranting the issuance of a writ of certiorari. App. 14a - 23a.

Respectfully submitted,

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(*4 Cont.*) cannot pass constitutional muster. *Id.* at 704, 705. Respondent relies on the advancement of its private pecuniary interest as a basis for this discrimination and asserts that "the Pennsylvania legislature and the courts look with favor" on borough incorporation, citing *Incorporation of the Borough of Edgewood*, 130 Pa. 348, 18 A. 646 (1889). Respondent's Brief at 22. That case is beside the point as it relates to the incorporation of a "village and its adjacent territory" and not to the decomposition of incorporated municipalities. No reason for this discrimination is found in the statute nor cited by the Supreme Court of Pennsylvania. The state Attorney General did not participate.

IN THE COURT OF COMMON PLEAS OF
BERKS COUNTY, PENNSYLVANIA
CIVIL ACTION

IN RE: INCORPORATION : 193 Misc.
OF BOROUGH OF : Docket
NEW MORGAN : 1987

RULE TO SHOW CAUSE

AND NOW, this day of , 1988, upon consideration of the within Motion a Rule is entered upon Applicant to show cause why the Court should not Dismiss the Application for Incorporation.

RULE RETURNABLE on, 1988.

BY THE COURT:

_____

J.

Extract from the record of said court
Certified this 6th day of September 1991

JAMES P. TROUTMAN (Seal of the Court)
Clerk of Common Pleas - Criminal Division
Per Yvonne Sassoc Deputy

IN THE COURT OF COMMON PLEAS OF
BERKS COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

IN RE:	INCORPORATION	: 193 Misc.
	OF BOROUGH OF	: Docket
	NEW MORGAN	: 1987

MOTION AND MEMORANDUM AND RULE TO SHOW CAUSE WHY THE APPLICATION FOR INCORPORATION SHOULD NOT BE DISMISSED FOR REASONS OF UNCONSTITUTIONALITY

Citizen - Intervenors come before the Court and submit the following reasons in support of their request for dismissal of the Application for Incorporation:

1. The Application is based on 53 P.S. 45202.

2. Said section limits the right to file an application for incorporation to "freeholders residing" in the proposed borough.

3. "Freeholder" has been defined as one who owns real property including a corporation. *In Re Incorporation of Borough of Seven Fields*, 462 A.2 865, 869 (Pa. Cmwlth 1983).

4. "Residing" has been defined to include a corporation which maintains its business office in the proposed borough.

5. Article I, Section 2 of the Pennsylvania Constitution states:

> All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the

advancement of these ends they have at all times an *inalienable* and *indefeasible* right to alter, reform or abolish their government in such manner as they may think proper. (Emphasis supplied).

6. Article I, Section 2 of the Pennsylvania Constitution embraces only three known recognized methods through which the whole people can consent to the alteration of existing lawful government: 1) That provided by the constitution; 2) a law pursuant to which a representative body of the people is given the power of the people to prepare revisions of existing government and 3) a revolution. *Wells v. Bain* 75 Pa. 39, 15 Am Rep. 563 (1873).

7. Article VII, Section 1 of the Pennsylvania Constitution prescribes the qualifications of electors and does not provide for any means test or property ownership as a qualification for an elector nor as a pre-condition or precursor triggering the right to vote.

8. The Pennsylvania Constitution of 1874 prescribed a means test (now repealed) for persons twenty-two years of age and older in the form of a state or county tax. Article VIII, Sec. Fourth, Purdon's Constitution, Articles 1 to 2, p. 140.

9. Article I, Section 5 of the Pennsylvania Constitution provides: "Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

10. No constitutional qualification of a voter can be abridged, added to, or altered by the legislature. *Thompson v. Ewing*, 1 Brewst. 67, 103 (1861); *Page v. Allen*, 58 Pa. 338, 98 Am. Dec. 272 (1868); *McCafferty v. Gwyer*, 59 Pa. 109 (1868); *Rishel v. Luther*, 2 Dist. 769, (1893). The right to vote cannot be qualified or restricted. *Independence Party Nomination*, 57

A. 344, 208 Pa. 108 (1904). An act which either expressly or by its operation deprives a qualified elector of his right to vote is unconstitutional and void. *McCafferty, supra*; *Paterson v. Barlow*, 60 Pa. 54 (1869); *Commonwealth v. Martin*, 20 C.C. 117, 6 Dist. 645 (1897).

11. Article I, Section 26 of the Pennsylvania Constitution states:

> Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.

12. Article I, Section 1 of the Pennsylvania Constitution holds that "[a]ll men are born equally free and independent, and have certain inherent and indefeasible rights...."

13. The United States Constitution guarantees to every citizen the equal protection of the laws and the application of due process of law. U.S. Const., Fourteenth Amendment.

14. Federal election laws mandate equal treatment to all individuals and forbid different "standards, practices, or procedures" to determine eligibility to vote between different individuals. 42 USCS Sec. 1971 (a)(2).

15. The United States Congress has made a finding and declared that "the constitutional right of citizens to vote is denied or abridged" when payment of a poll tax is required as a precondition to voting. 42 USCS Sec. 1973 h.

16. 42 USCS Sec. 1973 aa states: "(a) No citizen shall be denied, because of his failure to comply with any test or device, his right to vote in any...local election...."

17. The "freeholder" requirement of 53 P.S. 45202 violates the Pennsylvania and United States Constitutions and Federal Election Laws in that it creates different classes of citizens,

makes ownership of real estate a precondition and/or precursor to the right to vote and even empowers corporations to initiate a process for the creation of a new government while denying that power to non-propertied voters.

18. Article I of the Pennsylvania Constitution, the Declaration of Rights, supersedes all delegated government power.

> To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate. Article I, Sec. 25.

19. 53 P.S. 45202 violates the Pennsylvania and United States Constitutions and Federal Election Laws by disenfranchising citizens of a municipality who do not reside in a proposed borough's geographical area, by allowing only those who reside within that area to vote on whether or not such a borough should be created.

20. Article IX, Section 8 states:

> Uniform Legislation. The General Assembly shall, within two years following the adoption of this article, enact uniform legislation establishing the procedure for consolidation, merger or change of the boundaries of municipalities.
>
> Initiative. The electors of any municipality shall have the right, by **initiative and referendum**, to consolidate, merge and change boundaries by a majority vote of those voting thereon in each municipality, without the approval of any governing body.
>
> Study. The General Assembly shall designate an agency of the Commonwealth to study consolidation, merger and boundary changes, advise municipalities on all problems

which might be connected therewith, and initiate local referendum....(Emphasis supplied).

21. The legislature failed to enact uniform legislation regarding changing of boundaries of municipalities within the required time period. Therefore, the constitutional procedure prescribing change only by initiative and referendum prevails. Cf. *Derry Township v. Borough of Hummelstown*, 326 A. 2d 342 (Pa. 1974), notwithstanding *Bear Creek Township v. Borough of Penn Lake Park*, 340 A. 2d 642 (Pa. Cmwlth 1975) which narrowly construed Art IX, Sec. 8 while ignoring the strong mandates of the Declaration of Rights. See also, *In re Establishment of Boundary Between Collier Township and Robinson Township*, 360 A. 2d 841 (Pa. Cmwlth 1976) to the effect that "...the Code, as it relates to the alteration of township lines to suit the convenience of the inhabitants, is...invalid." Id. @ 842. And see *Laflin Borough v. Yatesville Borough*, 404 A. 2d 717 (Pa. Cmwlth 1979) distinguishing a change of boundary line from the adjustment of a boundary line disputed when it is uncertain where the boundary is, and declaring: "Whether a municipal boundary should be changed is a proper question for the ballot." Id. @ 719.

22. 53 P.S. 45202 violates the intent and spirit of the Pennsylvania Constitution which mandates uniformity in the legislation regulating the physical form of municipalities.

23. 53 P.S. 45202 embodies an unlawful delegation of power by the legislature to the judiciary in that said section lacks sufficient standards and clarity to define the role and function of the judiciary in considering applications filed pursuant thereto.

24. 53 P.S. 45202 embodies an unconstitutional delegation of power by the legislature to a private corporation or

association of "power to...interfere with any municipal improvement, money, property or effects...." Article III, Sec. 31, Pennsylvania Constitution. In its application Sec. 45202 has been interpreted to permit a resident corporation to file an application for the creation of a borough. *In re Incorporation of Borough of Seven Fields*, 462 A. 2d 865, 869 (Pa. Cmwlth 1983). If successful, such an application by a corporation would interfere with municipal improvement (roads), money (taxes and other revenues), property or effects." (The standing of applicant herein is challenged as it is not a corporation, is not a legal person and, therefore, cannot have a residence in the area of the proposed borough).

WHEREFORE, Intervenors pray that the Court will grant this Motion and dismiss the application.

NORMAN ASHTON KLINGER AND ASSOCIATES, P.C.
612 SWEDE STREET
NORRISTOWN, PA 19401

BY: (Signed) NORMAN ASHTON KLINGER, ESQUIRE
Attorney for Intervenors

DATE: 3-28-88

NORMAN ASHTON KLINGER & ASSOCIATES, P.C.
ATTORNEYS AT LAW
612 SWEDE STREET
NORRISTOWN, PA 19401-3994

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FILE NO.

March 28, 1988

Hon. Thomas J. Eshelman, Judge
Berks County Court of Common Pleas
Courthouse
Reading, Pa 19063

RE: Incorporation of Borough of New Morgan
NO. 193 Misc. 1987
Berks County

Dear Judge Eshelman:

Enclosed please find a copy of a combined Motion and Memorandum and Rule to Show Cause challenging constitutionality of the applicable law in accordance with your request to do so. The original is being filed of record.

Respectfully,
(Signed)

N[illegible]:em
Enc.
cc: Henry M. Koch, Jr., Esq. [Attorney for Morgantown Properties]
Brett A. Huckabee, Esq.
Norman E. Dettra, Jr., Esq.

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

LeRoy S. Zimmerman
ATTORNEY GENERAL
June 2, 1988

Reply To:

15th Floor, Strawberry Sq.
Harrisburg, PA 17120
(717) 783-1471

Mr. Norman A. Klinger, Esq.
612 Swede Street
Norristown, PA 19401-3994

Re: Incorporation of Borough of New Morgan
No. 193 Misc. 1987 (1598)

Dear Mr. Klinger:

This acknowledges receipt of your Notice pursuant to Rule 235 of the Pennsylvania Rules of Civil Procedure.

This matter will be reviewed by our staff to determine if our involvement is warranted. If we decide to intervene in the above-captioned case, we will promptly notify you. If no notification is received from this office within thirty days of the date of this letter, please assume that the Attorney General will not be entering his appearance in this matter.

Please advise this office of the final disposition of this matter and of any appellate proceedings in this case. Thank you.

Sincerely,

(Signed)
Maryanne Lewis
Legal Assistant

(Date Stamp)

CLERK OF COURTS
'91 SEP 11 A9:43

NORMAN ASHTON KLINGER & ASSOC., P.C.
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IN THE COURT OF COMMON PLEAS OF
BERKS COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

IN RE:	INCORPORATION	: 193 Misc.
	OF BOROUGH OF	: Docket
	NEW MORGAN	: 1987

INTERVENORS' SUGGESTION OF RECORD

1. Kathleen Hood, an Intervenor herein, testified before the Borough Advisory Committee that she resided with her parents in Robeson Township. See attached Exhibit "A", page 97 of the Notes of Testimony taken on February 2, 1988.

2. On September 4, 1991, Ms. Hood executed an affidavit reaffirming that at no time during the pendency of this action, from its inception to the present, did she own any real estate. See attached Exhibit "B" incorporated herein by reference.

3. It is a matter of public record in the Recorder of Deeds Office of Berks County that Kathleen Hood owned no real

estate from the inception of the instant action to the present.

WHEREFORE, it is hereby suggested of record that at no time during the pendency of this action, from its inception to the present, did Kathleen Hood own any real estate.

Respectfully submitted,
NORMAN ASHTON KLINGER
& ASSOC., P.C.

Date: 9-6-91

By: (Signed)
Norman Ashton Klinger, Esquire
Attorney for Intervenors

EXCERPT FROM NOTES OF TESTIMONY TAKEN 2 FEBRUARY 1988 BEFORE THE BOROUGH ADVISORY COMMITTEE

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Q Miss Hood, where do you live?

A Robeson Township, Berks County, Pennsylvania.

Q With whom do you live?

A I reside with my parents, Edna and David Hood.

Q How long have you resided in Robeson Township?

A I have been in Robeson Township for approximately 30 years.

Q What's your profession?

A I'm an educator by trade.

Q Are you familiar with the developments and proposals of Mr. Carr and Morgantown Properties?

A Yes, I am.

Q How did you become aware of the activities of Mr. Carr and Morgantown Properties?

A I became aware of those activities in December of 1985 when an announcement had come via Philadelphia news that there was a proposed trash-to-steam plant being proposed for Morgantown.

Since that time, I have attended various meetings, hearings and so forth relating to this development.

Q What did you discover in the early course of your acquaintance with Morgantown Properties regarding the proposed mass-burn trash-to-steam plant, regarding any permits that may have been issued?

A On January 7, 1986, I had attended a community meeting which was held in Morgantown Fire Hall, Caernarvon

AFFIDAVIT OF KATHLEEN HOOD

I, Kathleen Hood, residing on Route 82, Box 210, Rd 2, Robeson Township, Berks County, Morgantown, PA, 19543, confirm that I am one of the parties in the Petition for Writ of Certiorari denominated Caernarvon Township, et al. v. Morgantown Properties at No. 91-92 in the United States Supreme Court. Further, I confirm that at no time during the pendency of the underlying action, from its inception to the present, did I own any real estate.

I, Kathleen Hood, verify, depose and say, subject to the penalties of 18 Pa. C.S.A. 4904 for making false statements, that the foregoing averments are true upon personal knowledge.

Date: 9/4/91 (Signature)

KATHLEEN HOOD

(Signature)

Notary Seal
Carole S. Levin, Notary Public
East Earl Twp., Lancaster County
My Commission Expires Oct. 7, 1991
Member, Pennsylvania Association of Notaries

Exhibit "B"

STATE STATUTES GRANTING EXCLUSIVE RIGHTS TO FREEHOLDERS

I. APPOINTMENTS TO PUBLIC SERVICE

ALABAMA

Freeholder or householder to serve in canvassing election returns. Ala. Code Sec. 17-14-1 (1975).

ARIZONA

Freeholder to serve as commissioner setting county highway bond issue. Ariz. Rev. Stat. Sec. 18-232.

ARKANSAS

Freeholder to assess damages caused by grading of public streets and grounds. Ark. Code Ann. Sec. 14-301-105.

COLORADO

Freeholder to determine compensation in eminent domain matters. Colo. Rev. Stat. Sec. 38-1-105 (1989).

DELAWARE

Freeholder to serve on board of assessment. Del. Code Ann. tit. 9, Sec. 1304 (1953).

GEORGIA

Freeholders appraise and settle decedent estates. Ga. Code Ann. Sec. 53-4-12.

INDIANA

Freeholders serve on board to control cemetery management. Ind. Code Sec. 23-14-24-6 (1980).

Freeholders appraise damage to neighboring land in condemnation cases. Ind. Code Sec. 4-17-9-2 (1984).

Freeholders appraise State owned land for sale or other disposition. Ind. Code Sec. 4-18-4-10 (1945).

IOWA

Freeholders appraise islands before sale by State. Iowa Code Ann. Sec. 568.22 (WEST 1924).

KANSAS

Freeholders serve on Zoning Hearing Board; Parks Commission. Kan. Stat. Ann. Sec. 19-2902 (WEST 1970);Sec. 13-1347 (WEST 1949).

KENTUCKY

Freeholders serve on Air Pollution Control Board. Ky. Rev. Stat. Ann. Sec. 77.070 (1986).

Freeholders to be supervisors of taxes. Ky. Rev. Stat. Ann. Sec. 92.260 (1954).

MINNESOTA

Freeholders serve on Planning and Zoning Board. Minn. Stat. Ann. Sec. 366.17 (WEST 1989).

Freeholders serve on Building Commission. Minn. Stat.

Ann. Sec. 374.08 (WEST 1985).

MISSOURI

Freeholders serve on county planning commissions. Mo. Ann. Stat. Sec. 64.520.

NEBRASKA

Freeholders serve as Park and Recreation Commissioners. Neb. Rev. Stat. Sec. 17-952, Sec. 16-696 (1943).

Freeholders serve on board to determine the disposition of money obtained through bond issues. Neb. Rev. Stat. Sec. 10-803 (1943).

NEW MEXICO

Freeholders serve on commission to sell public lands. N. M. Stat. Ann. Sec. 19-4-28 (1978).

OHIO

Freeholders serve on Board of Park Commissioners. Ohio Rev. Code Ann. Sec. 511.19 (Anderson 1986).

Freeholders serve on Board of Governors on Municipal Hospitals. Ohio Rev. Code Ann. Sec. 749.18 (Anderson 1957).

OKLAHOMA

Freeholders serve on County Excise Board. Okla. Stat. Ann. tit. 68, Sec. 3005.1 (WEST 1990).

SOUTH DAKOTA

Freeholders serve on City Airport Boards. S.D. Codified Laws Sec. 50-6-2 (1960).

Freeholders serve on Board of Trustees for county hospitals. S.D. Codified Laws SEC. 34-8-7 (1966).

TENNESSEE

Freeholders serve on Board of Equalization. Tenn. Code Ann. Sec. 67-1-401 (1988).

Freeholders serve as jail inspectors. Tenn. Code Ann. Sec. 41-4-116 (1984).

VIRGINIA

Freeholders appointed to settle border disputes between municipalities. Va. Code Ann. Sec. 15.1-1026 (1950).

WEST VIRGINIA

Freeholders serve on Board of Zoning Appeals. W. Va. Code. Sec. 8-24-51 (1969).

Freeholders serve on Municipal Planning Commission. W. Va. Code. Sec. 8-24-5 (1986).

Freeholders serve as Park and Recreation Commissioners. W. Va. Code. Secs. 8-21-3, 7-11-3 (1969).

WISCONSIN

Freeholders petition for enlargement of cemetery owned

by cemetery or religious associations and freeholders appraise damage to landowners resulting from such enlargement. Wis. Stat. Ann. Sec. 157.064 (WEST 1989). [ALSO 2B]

II. ELECTIONS TO PUBLIC SERVICE POSITIONS

DELAWARE

Freeholders elected as voting inspectors. Del. Code Ann. tit. 15 Sec. 5306 (1953).

IDAHO

Freeholders elected on Board of Commissioners for fire protection districts. Idaho Code Sec. 31-1409 (1986).

INDIANA

Freeholder elected as County Assessor. Ind. Code Sec. 36-2-15-2 (1980).

MICHIGAN

Freeholders elected to village charter revision commission. Mich. Comp. Laws Ann. Sec. 78-14.

MISSISSIPPI

Freeholders elected as supervisors of local government. Miss. Code Ann. Sec. 19-3-3 (1972).

NEBRASKA

Freeholders elected to frame city charter commission. Neb. Const. Art. XI, Sec. 2 (1912).

WASHINGTON

Freeholders elected to city charter commission. Wash. Rev. Code Ann. Sec. 35.22.050 (1965).

II. PETITIONING FOR MUNICIPAL INCORPORATION, BORDER CHANGES

MICHIGAN

Freeholders petition to create township, or change borders or incorporate village. Mich. Comp. Laws Ann. Sec. 46.14, 81.3

OHIO

Freeholders petition to incorporate municipality or village. Ohio Rev. Code Ann. Sec. 707.07, 707.22 (Anderson 1967).

PENNSYLVANIA

See Petition for Certiorari herein.

SOUTH CAROLINA

Freeholders petition for annexation. S.C. Code Ann. Sec. 5-3-50 (1976).

VERMONT

Freeholders petition to annex adjacent territory. Vt.Stat. Ann. tit. 24, Sec. 1316 (1884).

WEST VIRGINIA

Freeholders petition to put annexation on ballot or to annex without vote. W. Va. Code Sec. 8-6-2, 8-6-4

(1989).

Freeholders petition to shrink municipality. W. Va. Code Sec. 8-7-2 (1969).

IV. PETITIONING FOR GOVERNMENT ACTION

COLORADO

Freeholders petition for appointment of committee to investigate county treasury. Colo. Rev. Stat. Sec. 30-10-722 (1990).

FLORIDA

Freeholders consent to inclusion of their land in spaceport territory. Fla. Stat. Ann. Sec. 331.329 (West 1953).

GEORGIA

Freeholders petition to disqualify tax assessors. Ga. Code Ann. Sec. 48-5-296.

NEBRASKA

Freeholders petition for appointment of town officers and for special town meetings. Neb. Rev. Stat. Sec. 23-225, 23- 230 (1943).

Freeholders petition for annexation of land into school district. Neb. Rev. Stat. Sec. 79-403 (1943).

Freeholders petition for compromise of municipal indebtedness. Neb. Rev. Stat. Sec. 10-302 (1943).

Freeholders petition for general bond issue. Neb. Rev. Stat. Sec. 10-409 (1943).

Freeholders petition for improvement of public libraries. Neb. Rev. Stat. Sec. 17-967 (1943).

NEW MEXICO

Freeholders verify claim for medical expenses of sheriff or deputy injured in line of duty. N.M. Stat. Ann. Sec. 4-41-11 (1978).

NEW YORK

Freeholders petition for investigation of unlawful use of municipal money. N.Y. Gen. Mun. Law Sec. 4 (McKinney 1909).

OHIO

Freeholders petition for development and improvement of public buildings. Ohio Rev. Code Ann. Sec. 511.05 (Anderson 1953).

SOUTH CAROLINA

Freeholders petition for municipality to establish hospital. S.C. Code Ann. Sec. 44-7-920 (1976).

SOUTH DAKOTA

Freeholder petitions for appointment of municipal officers. S.D. Codified Laws Sec. 8-3-20 (1963).

TENNESSEE

Freeholder petitions for removal of public officer or

employee. Tenn. Code Ann. Sec. 8-47-116 (1932).

VERMONT

Freeholders petition for construction of public park. Vt. Stat. Ann. tit. 24, Sec. 2501 (1880).

WISCONSIN

Freeholders petition for enlargement of cemetery and appraise damage to landowners resulting therefrom. Wis. Stat. Ann. Sec. 157.064 (WEST 1989).

V. PETITIONING FOR BALLOT QUESTION

DELAWARE

Freeholders petition for vote to create suburban park community. Del. Code Ann. tit. 9, Sec. 625 (1953).

INDIANA

Freeholders petition for vote to establish hospital. Ind. Code Sec. 16-11-1-1 (1949).

Freeholders petition for vote on use of school property. Ind. Code Sec. 20-5-37-2 (1988).

IOWA

Freeholders petition for vote on building or acquiring a public hall. Iowa Code Ann. Sec. 360.1 (West 1974).

MINNESOTA

Freeholders petition for vote to establish a library. Minn. Stat. Ann. Sec. 134.08 (West 1973).

VIRGINIA

Freeholders petition for vote to determine if a housing authority should be created. Va. Code Ann. Sec. 36-4 (1950).

VI. VOTING RIGHTS

FLORIDA

Freeholders vote to create recreation system. Fla. Stat. Ann. Sec. 418.08 (West 1953).

Freeholders vote to authorize construction of public housing project. Fla. Stat. Ann. Sec. 421.54 (West 1953).

Freeholders vote to create special residential or business neighborhood improvement districts. Fla. Stat. Ann. Sec. 163.511 (West 1953).

ERRATA AND CORRECTIONS TO PETITION FOR CERTIORARI

Page	Line	Text
6	10	"...Supreme Court of Pennsylvania affirmed 6 - 2." THIS SHOULD READ: "...Supreme Court of Pennsylvania affirmed 4 - 2. (Only seven justices sit on this court. The Chief Justice did not participate.)
17	2	"III. Freeholder concepts remain inbedded...." THIS SHOULD READ "III. Freeholder concepts remain imbedded...."